IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

MFA.No. 1270 of 1995()

OPMV.1944/1991 of MOTOR ACCIDENT CLAIMS TRIBUNAL, TRIVANDRUM
.....

APPELLANT: PETITIONER

MADHU S/O. SREEDHARAN,
VARUTHATTU PUTHUENVEEDU,
CHUTTIYOORKADA, MARUKIL VILLAGE,
MALAYINKIL PO.

BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)

RESPONDENTS: RESPONDENTS
----

1. **N.D.NAIR, S/O.M.N.NAIR,**
   KAMATCHY AMMANCOIL STREET,
   PONDICHERRY, (OWNER OF CAR PYW 7809)

2. **GOPALAKRISHNAN NAIR, S/O.SUKUMARAN NAIR,**
   KATTUVILAKATHU VEEDU,
   KARIMONKULAM ELA.,
   VATTIYOORKAVU, THIRUVANANTHAPURAM. (DRIVER).

3. **THE NEW INDIA ASSURANCE COMPANY LTD.,**
   REP.BY ITS DIVISIONAL MANAGER,
   THIRUVANANTHAPURAM.

BY ADV. SRI.B.S.KRISHNAN (SR.)
SRI.K.ANAND (A.201) - R3

THIS MISC. FIRST APPEAL HAVING COME UP FOR ADMISSION ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 1270 of 1995

Dated this the 14th day of June, 2007

Judgment

Koshy, J.

Appellant/Claimant approached the motor accidents claims tribunal claiming that on 10.6.1991 at 1.00 a.m. while he was riding the bullock cart through Kowdiar-Vellayambalam road, a car bearing registration No.PYW 7809 driven by the second respondent came from the back and hit on the bullock cart causing the appellant to fall down and to sustain severe injuries, that the accident occurred due to rash and negligent driving of the second respondent, that he was admitted in the Medical College Hospital and treated there for 66 days, that he was aged only 23 years at the time of accident and claimed a sum of Rs.2,00,000/- as compensation. Tribunal found that the accident occurred due to the negligence of the second respondent and the car was insured by the third respondent insurance company as alleged, but, tribunal granted only Rs.41,100/- as compensation. This appeal is filed only claiming

enhancement of compensation. Hence, we are considering only the quantum of compensation awarded by the tribunal.

2. Monthly income of the claimant was fixed at Rs.900/- by the tribunal. Admittedly, the claimant was riding a bullock cart at the time of accident. His employer was examined as PW2 and he claimed that he was paid daily wages of Rs.60/-. That evidence was not contradicted. Even if he gets employment for 25 days in a month, his monthly income will come to Rs.1,500/-. It was also pointed out that in 1994 when second schedule was incorporated, notional income of a non-earning persons was Rs.1,250/- (Rs.15,000/- annually). Of course, the accident occurred in 1991. But, here, claimant was an earning person. Hence, we take monthly income at Rs.1,250/- (Rs.15,000/- per year).

3. PW3 doctor certified 23% disability by Ext.A3 certificate. Tribunal discussed the evidence as follows:

> "PW3 had certified that the petitioner had permanent disability of 21% due to ankylosis of joint and limitation of the movement. There was gross wasting of the left guadricops. Shortening of the left lower limb by 2" due to 20 degree fixed

deformity at the left knee. The big toe was amputated. Ext.A8 is the certificate issued by PW3. It would support the evidence of PW3. Ext.A4 is the treatment certificate. It would show that the petitioner was an inpatient at the Medical College Hospital, Thiruvananthapuram from 11.6.1991 to 22.6.1991 and that the petitioner had compound open injury of the left knee. Ext.A6, photo copy of the wound certificate would show that the petitioner had injury left big toe with the amputation at P1. There was lacerated wound 12 x 9 x 3 c.m. over the anterior aspect of the left knee. Something more is written on Ext.A6 but it is not legible. Ext.A3 would show that in 1992 PW3 had certified the disability of the petitioner at 23%. Ext.A9 discharge certificate issued from the General Hospital, Thiruvananthapuram would show that the petitioner was inpatient at the General Hospital, Thiruvananthapuram from 22.6.1991 till 15.8.1991. Ext.A10 is an outpatient ticket. It did not give any better information. Ext.A11 would show that the petitioner had undergone physiotherapy treatment for four days at Medical College Hospital, Thiruvananthapuram. Ext.A12 discharge card issued from the Medical College Hospital did not give any better

> information. Ext.A13 is the OP ticket. The institution from which it was issued is not clear, but it is mentioned that the petitioner was an inpatient from 22.6.1991 to 15.8.1991."

We are of the opinion that in view of Ext.A3 disability certificate, the disability is at least 20%. Tribunal did not award compensation in a scientific manner. Apex Court held in various cases that as far as possible compensation should be calculated by multiplier method.

4. A three member bench of the Supreme Court in Smt.Supe Dei and others v. M/s.National Insurance Company Ltd.and another (JT 2002 (Suppl.1) SC 451), held that the second schedule of the Motor Vehicles Act is framed for the purpose of awarding compensation under section 163-A, but, it serves as a guideline for determination of compensation under section 166 of the Motor Vehicles Act. Since the victim of the accident in that case was aged 32, considering the second schedule, Hon'ble Supreme Court accepted 17 as the multiplier. In United India Insurance Co. Ltd. v. Patricia Jean Mahajan and others (JT 2002 (5) SC 74), the Apex Court held that, except in very rare cases, multiplier system should not be deviated from. The other methods, which were in vogue prior to

the introduction of the multiplier system, were held to be no more good system. It was further held that normally the multiplier, as indicated in the second schedule, should be applied. Though the second schedule is found to be a safe guide for the purpose of calculation of the amount of compensation, in special circumstances, it can be varied. In that case, it was also held that if the multiplicand is very high, a lesser multiplier can be taken. In Abati Bezbaruah v. Dy. Director General, Geological Survey of India and another ((2003) 3 SCC 148), it was held that structured formula mentioned in the second schedule gives guidelines for determination of the amount of compensation in terms of section 166 of the Motor Vehicles Act. Deviation from the structured formula can be resorted to only in exceptional cases and ordinarily the above multiplier system should be followed.

5. In this case, claimant was aged 23 years at the time of accident. Taking guidance from the second schedule, we are fixing 17 as the multiplier. Hence, compensation payable for 20% disability will be Rs.15,000 x 17 x $\frac{20}{100}$ = Rs.51,000/-. Tribunal on a ready and rough

estimate awarded only Rs.25,000/- as compensation for disability and loss of earning capacity. Hence, claimant will be entitled to an additional amount of Rs.26,000/- on this count.

Tribunal awarded Rs.4,500/- as loss of actual earning for five months taking Rs.900/- as monthly income. Since we have enhanced monthly income at Rs.1,250/-, he will get an additional amount of Rs.1,750/-. Even though it was argued that compensation awarded under other heads is too meagre, considering the total amount awarded, we are not granting any further enhancement. Because of long delay, we grant only 6% interest. The additional compensation amount of Rs.27,750/- shall be deposited by the third respondent insurance with 6% interest from the date of application till its deposit. On deposit of the amount, appellant is allowed to withdraw the same. Appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A.NO.1270/95

JUDGMENT

Dated:14th June, 2007